UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

MODERN CONCRETE PRODUCTS, INC.

Employer

and

Case 12-RD-1057

JESUS HERNANDEZ

Petitioner

and

LABORERS INTERNATIONAL UNION OF AMERICA, CONSTRUCTION AND CRAFT WORKERS, LOCAL 1652

Union

ORDER

Petitioner's Request for Review of the Acting Regional Director's administrative dismissal of the instant petition raises no substantial issues warranting reversal of the Acting Regional Director's action. Accordingly, the dismissal is affirmed.¹

WILMA B. LIEBMAN, CHAIRMAN PETER C. SCHAUMBER, MEMBER

Dated, Washington, D.C., December 30, 2009.

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Narricot Industries, L.P. v. NLRB, ___F.3d___, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), cert. granted ___S.Ct.___, 2009 WL 1468482 (U.S. Nov. 2, 2009); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009)(No. 09-213); Teamsters Local 523 v. NLRB, ___F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

Member Schaumber agrees with the decision of the Acting Regional Director in light of the nature of the Sec. 8(a)(5) charges the Regional Director found to be with merit. He points out that, while the Board required a causation hearing in Saint Gobain Abrasives, Inc., 342 NLRB 434 (2004), there the unfair labor practice alleged was "a single unilateral change on a single subject and ... there ... [were] significant factual issues as to the impact of that change." Id. at 434. He is of the view that, at an appropriate time, the Board should consider reviewing its blocking charge policies to determine whether they properly weigh the Board's dual interests in labor relations stability and employee free choice.